MHN Government Services, LLC *and* International Association of Machinists and Aerospace Workers, AFL–CIO. Case 27–CA–253931

May 7, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

This is a refusal-to-bargain case in which the Respondent, MHN Government Services, LLC, is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and an amended charge filed on December 30, 2019, and January 10, 2020,[1] respectively, by International Association of Machinists and Aerospace Workers, AFL–CIO (the Union), the General Counsel issued the complaint on January 13, 2020, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 27–RC–237341. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On February 3, 2020, the General Counsel filed a Motion for Summary Judgment. On February 20, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed an opposition to the General Counsel's Motion for Summary Judgment and a cross-motion for summary judgment. The Union filed a reply to the Respondent's opposition and then filed a Joinder in the General Counsel's Motion for Summary Judgment and reply to the Respondent's opposition. The Respondent then filed a supplemental statement in opposition to the General Counsel's Motion for Summary Judgment.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain but contests the validity of the Union's certification of representative based on its objections to the election in the underlying representation proceeding.[2]

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a Delaware limited liability company with a principal office and place of business in San Rafael, California, and offices and places of business throughout the United States, including at the Fort Carson Army installation and the U.S. Air Force Academy in Colorado Springs, Colorado, where it has been engaged in providing counseling services in connection with the Military and Family Life Counseling Program pursuant to a contract with the United States Government.

During the 12-month period preceding issuance of the complaint, a representative time period, the Respondent, in conducting its operations described above, has derived gross revenues in excess of $1 million, and has purchased and received at its San Rafael, California office goods and services valued in excess of $5000 directly from points outside the State of California.

[1] The complaint inadvertently states that the first amended charge was filed on January 10, 2019.

Although the Respondent in its answer denies knowledge or information sufficient to form a belief regarding the dates that the charge and amended charge were filed or served upon the Respondent, the Respondent admits that it received the charge and amended charge. Copies of the charge, the amended charge, and their respective affidavits of service are included in the documents supporting the General Counsel's motion, showing the dates as alleged, and the Respondent has not challenged the authenticity of these documents.

[2] The Respondent asserts as an affirmative defense that the complaint fails to state a claim upon which relief can be granted. The Respondent has not offered any explanation or evidence to support this bare assertion. Thus, we find that this affirmative defense is insufficient to warrant denial of the General Counsel's motion for summary judgment in this proceeding. See, e.g., *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58, slip op. at 1 fn. 1 (2018), and cases cited therein.

[3] Accordingly, we deny the Respondent's cross-motion for summary judgment and its request that the complaint be dismissed and that the underlying representation proceeding be reopened.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on April 5, 2019, the Union was certified on August 1, 2019,[4] as the exclusive collective-bargaining representative of the employees in the following appropriate unit:[5]

> All full-time and regular part-time Military Family Life Counselor (MFLC) employees known as Special Professional Associates employed by the Employer to perform work on-base and in and around Colorado Springs, Colorado, for the MFLC III Program at the Fort Carson Army installation and the US Air Force Academy; excluding all other employees, managers, office clericals, guards, and supervisors as defined by the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

At all material times, the following individuals have held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Elena Honeycutt	-	Human Resources Manager
Kenneth Rodriguez	-	Senior Director of Human Resources
Mark Corcoran	-	Vice President—Labor Relations

The Union, by letter transmitted by email on August 6 and again on December 10, 2019, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about December 27, 2019, the Respondent, by its Vice President – Labor Relations Mark Corcoran, in writing, has failed and refused to recognize and bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 27, 2019, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); accord *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).[6]

ORDER

The National Labor Relations Board orders that the Respondent, MHN Government Services, LLC, Colorado Springs, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

---

[4] By unpublished Order dated November 12, 2019, the Board denied the Respondent's request for review of the Regional Director's Decision on Determinative Challenged Ballot and Objections.

[5] The Respondent's answer denies that the description of the appropriate unit in complaint par. 5(a) is correct, based on its assertion that it does not employ any Special Professional Associates at the Fort Carson Army installation. The Board has established, however, that the appropriateness of a bargaining unit is based upon the conditions of employment that exist at the time of the hearing. Consequently, any changes in the composition of a unit that occur after the underlying representation hearing do not constitute newly discovered or previously unavailable evidence. See, e.g., *Puna Geothermal Venture,* 362 NLRB 1087, 1087–1088 fn. 4 (2015). Accordingly, the Respondent's denial does not preclude summary judgment or raise any material issues of fact warranting a hearing.

[6] The Union requests additional enhanced remedies. Contrary to the Union's assertion, there has been no showing that the Board's traditional remedies are insufficient to redress the violations found. Accordingly, we deny the Union's request for additional remedies. *NP Sunset LLC d/b/a Sunset Station Hotel Casino,* 367 NLRB No. 62, slip op. at 3 (2019).

In view of our denial of the Union's request for additional remedies, we find it unnecessary to pass on the Respondent's assertion that the General Counsel's motion should be denied because the Union's request for extraordinary remedies requires a hearing before an administrative law judge.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time Military Family Life Counselor (MFLC) employees known as Special Professional Associates employed by the Employer to perform work on-base and in and around Colorado Springs, Colorado, for the MFLC III Program at the Fort Carson Army installation and the US Air Force Academy; excluding all other employees, managers, office clericals, guards, and supervisors as defined by the Act.

(b) Post at its facilities in Colorado Springs, Colorado (specifically including its facilities at the Fort Carson Army installation and the U.S. Air Force Academy), copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 27, 2019.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 7, 2020

_____
John F. Ring, Chairman

_____
Marvin E. Kaplan, Member

_____
William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

[7] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facilities reopen and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of the paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

> All full-time and regular part-time Military Family Life Counselor (MFLC) employees known as Special Professional Associates employed by the Employer to perform work on-base and in and around Colorado Springs, Colorado, for the MFLC III Program at the Fort Carson Army installation and the US Air Force Academy; excluding all other employees, managers, office clericals, guards, and supervisors as defined by the Act.

MHN GOVERNMENT SERVICES, LLC

The Board's decision can be found at www.nlrb.gov/case/27-CA-253931 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.